

**BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001**

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY**

**Complaint on Sunday  
and Holiday Collections**

**Docket No. C2001-1**

**DOUGLAS F. CARLSON  
RESPONSE TO PRESIDING OFFICER'S RULING C2001-1/1  
AND COMMENTS ON NATURE OF EVIDENTIARY PRESENTATION**

**July 17, 2001**

In POR C2001-1/1, the presiding officer established a deadline of July 20, 2001, for me to report on the nature of the evidentiary presentation that I intend to make in this proceeding. POR C2001-1/1 at 2. This ruling directed me to "include suggestions outlining the procedural steps necessary to bring this Complaint to a conclusion." *Id.* The ruling set a deadline of August 17, 2001, for me to file my case-in-chief. *Id.* at 3. Although the ruling is not entirely clear on the next point, the ruling appears to direct me to provide, at the time that I submit my testimony, dates on which I would be available for oral cross-examination. *See Id.*

As a preliminary matter, I plan to submit testimony. My testimony probably will not be particularly lengthy. My testimony likely will consist primarily of evidence in support of the arguments that I expect to advance on brief. My testimony is not likely to consist of a substantial amount of new data or factual information.

Despite delays that have occurred during the discovery process, I may be able to meet the August 17, 2001, deadline for filing testimony. I will be unable to confirm, however, that I can submit my testimony by the August 17, 2001, deadline until I learn the outcome of my motion to compel the Postal Service to provide certain data from the

Collection Box Management System database.<sup>1</sup> I note that the answers to DFC/USPS-21, which inquire into the data that the CBMS database collects and retains concerning the actual time at which collection boxes were collected, might prompt a round of follow-up discovery to obtain the actual data. The information from the CBMS database will be necessary for the arguments that I expect to advance on brief. However, until I write my testimony, I will not know whether I will need the CBMS data for my testimony as well.

In response to this uncertainty, I suggest that the August 17, 2001, deadline for filing testimony should stand. However, if resolution of pending discovery disputes produces information whose quantity, timing, and importance for my testimony delays my submission of testimony, I will move for an extension of the August 17, 2001, deadline.

I also propose that the presiding officer consider requiring oral cross-examination only upon a showing of need by the Postal Service or another party. The Postal Reorganization Act does not provide any specific procedures for a hearing under section 3662. Section 3624 discusses procedural requirements for hearings, including the requirement of a hearing that conforms to 5 U.S.C. §§ 556 and 557. However, strictly speaking, section 3624 appears to apply only to requests from the Postal Service for an opinion and recommended decision under sections 3622 and 3623. Section 3661(c) also requires a hearing on the record under 5 U.S.C. §§ 556 and 557. However, the current proceeding is not a request for an advisory opinion under section 3661. Thus, no section of the Act grants a party an absolute right to conduct oral cross-examination of witnesses in a service-complaint proceeding under section 3662.

Nonetheless, the Administrative Procedure Act provides useful guidance; indeed, a reasonable person might infer that 5 U.S.C. §§ 556 and 557 should be the controlling statutes for the format of a section 3662 hearing. Section 556(d) provides that:

[a] party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, *and to conduct such cross-examination as may be required for a full and true disclosure of the facts* [emphasis added].

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<sup>1</sup> Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-19-21, filed June 26, 2001, and the Erratum filed July 2, 2001.

Thus, section 556(d) contemplates only cross-examination that is necessary for a full and true disclosure of the facts. Under section 556(d), the cross-examination does not necessarily need to be oral. At least one court has held that an oral proceeding is not always required. See *American Public Gas Association v. FPC*, 498 F.2d 718 (D.C. Cir. 1974).<sup>2</sup>

In this complaint proceeding, the burden should be on participants requesting oral cross-examination of witnesses to demonstrate that they have been unable to achieve a full and true disclosure of the facts via written cross-examination. An early ruling to this effect from the presiding officer would provide an extra incentive for witnesses to provide complete responses to written discovery requests. Congress may have specifically declined to prescribe particular formal procedures for cross-examination in service-complaint proceedings under section 3662 in order to ensure that individual citizens are not discouraged, or even precluded, from filing service complaints. Indeed, I am an individual participant, and given the distance between my home in California and Washington, DC, a trip to Washington would create a significant financial burden. Given the Act's silence on the issue, the presiding officer should be cautious about imposing an automatic or default requirement of oral cross-examination on witnesses in service-complaint proceedings.

If the August 17, 2001, date for me to file testimony stands, I propose a deadline of September 7, 2001, for the Postal Service to submit written discovery. Three weeks is a reasonable length of time for discovery given that my testimony will not introduce a substantial amount of new information. This date also serves a practical purpose because I expect to be out of town and unable to tend to duties related to this case for approximately two weeks in September. The presiding officer might consider setting a deadline of September 27, 2001, for participants to indicate whether they intend to submit rebuttal testimony.

Assuming the August 17, 2001, deadline for me to file testimony stands, no oral cross-examination occurs, and no party submits rebuttal testimony, I propose a deadline

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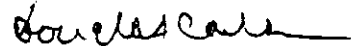
<sup>2</sup> For additional background information, see Docket No. MC2001-1, Response of the Office of the Consumer Advocate to Hearing Question of Commissioner Goldway, filed April 9, 2001.

of October 16, 2001, for filing initial briefs. Reply briefs would be due on October 30, 2001. These deadlines properly consider my two-week absence in September. If a party wishes to submit rebuttal testimony, the rebuttal testimony could be due on October 16, 2001. Filing deadlines for briefs would then need to be adjusted.

At some point in this proceeding, the presiding officer should set a date for participants to designate written cross-examination.

Once again, I expect that participants and the presiding officer will need to revisit these dates if the August 17, 2001, deadline for filing testimony changes, if oral cross-examination occurs, or if a party wishes to submit rebuttal testimony. Otherwise, these dates should provide a procedural calendar that will bring this proceeding to a fair and timely conclusion.

Respectfully submitted,



Dated: July 17, 2001

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DOUGLAS F. CARLSON

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### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon the required parties in accordance with section 12 of the *Rules of Practice*.



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DOUGLAS F. CARLSON

July 17, 2001  
Santa Cruz, California